STATE OF TENNESSEE
**DEPARTMENT OF COMMERCE AND INSURANCE**
**REAL ESTATE APPRAISER COMMISSION**
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243-1166
615-741-1831

# June 15, 2009

**Second Floor Conference Room, Andrew Johnson Tower**

The Tennessee Real Estate Appraiser Commission met June 15, 2009, at 8:53 a.m. in Nashville, Tennessee, at the Andrew Johnson Tower in the second floor conference room. Chairman, James E. Wade, Jr., called the meeting to order and the following business was transacted.

**COMMISSION MEMBERS PRESENT**
James E. Wade, Jr.
Kenneth Woodford
Marc Headden
Thomas R. Carter
Herbert Phillips
William R. Flowers, Jr.

**COMMISSION MEMBERS ABSENT**
Jason West
Najanna Coleman
Dr. Edward A. Baryla

**STAFF MEMBERS PRESENT**
Nikole Avers, Administrative Director
Jesse D. Joseph, Staff Attorney

**ADOPT AGENDA**
Mr. Headden made the motion to accept the agenda and it was seconded by Mr. Flowers. The motion carried unopposed.

**MINUTES**
The May 2009 minutes were reviewed. Mr. Phillips made the motion to accept the minutes as written. It was seconded by Mr. Headden. The motion carried unopposed.

**GENERAL BUSINESS**

**Experience Interviews**

**Adam Calvin Wyatt** made application to upgrade from a registered trainee to become a certified residential real estate appraiser. Mr. Flowers was the reviewer and he recommended deferment of this matter to a later date for consideration. He recommended the applicant submit three (3) additional residential appraisal reports illustrating use of the cost approach and if the reports are found to be acceptable then no second experience interview would be required. Mr. Woodford made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

**Rebecca Leigh Phillips** made application to upgrade from a registered trainee to become a certified general real estate appraiser. Mr. Carter and Mr. Woodford were the reviewers and recommended approval of her experience. Mr. Carter stated that Ms. Phillips had been with her company for eight years and primarily appraised farm land and all of her submitted work was large acreage properties and that she has limited experience in other appraisal types. Mr. Flowers made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

**Sarah Elizabeth Ogle** made application to upgrade from a registered trainee to become a certified residential real estate appraiser. Mr. Phillips was the reviewer and he recommended approval of her experience. Mr. Headden made the motion to accept the recommendation and Mr. Flowers seconded the motion. The motion carried unopposed.

## Education Committee Report

Dr. Baryla reviewed the education and submitted his recommendations via e-mail to Ms. Avers, the Administrative Director, to present to the Real Estate Appraiser Commission. Mr. Phillips made the motion to accept the recommendation as written. Mr. Headden seconded the motion. The motion carried unopposed.

| Course Provider | Course Number | Course Name | Instructors | Hrs. | Type | Rec. from Dr. Baryla |
|---|---|---|---|---|---|---|
| Appraisal Institute | 1301 | Introduction to Conservation Easement Valuation | Frank Harrison | 7 | CE | Recommend for |
| McKissock, Inc. | 1302 | On-Line Ad Valorem Tax Consultation | Richard McKissock | 3 | CE | Recommend for |
| McKissock, Inc. | 1303 | On-Line Introduction to Expert Witness Testimony | Richard McKissock | 7 | CE | Recommend 6 + 1 for test Online course AQB approved hours |
| McKissock, Inc. | 1304 | On-Line Current Issues In Appraising | Richard McKissock | 7 | CE | Recommend 6 + 1 for test Online course AQB approved hours |
| IRWA | 1305 | Eminent Domain Law Basics for Right of Way Professionals C 803 | Richard D. Schreiber, P.C. | 15 | CE | Recommend for retroactive approval to May 27, 2009 |

**Individual Course Approval**

| Name | License # | Provider | Course Name | Hrs | Type | Recommendation from Dr. Baryla |
|---|---|---|---|---|---|---|
| Leslie R. Williams | 170 | IRWA | Rural & Residential Easements, Takings, Damages and Cost to Cure | 4 | CE | Recommend for |
| Leslie R. Williams | 170 | IRWA | Conservation Easements and New IRS Rules | 4 | CE | Recommend for |

## LEGAL REPORT

**Based on prior Commission approval, the Chairman signed orders in the following matters:**

**Timothy W. Towner (**approved 1/09) - signed Consent Order revoking his certified residential certificate in two complaints where he violated the Ethics Rule, Conduct Section by sending in to the Commission an altered report, and committing many serious violations USPAP, including SRs1-1(a), (b), & (c), 1-4(a), & (b)(ii), and 2-1(a). Respondent also had an extensive prior disciplinary history, including 2 prior consent orders -- one of them suspending his certificate for an 8 month period.

**David R. Roberts** (approved 04/09) – signed Consent Order agreeing to a 1 year suspension of his Tennessee certified general certificate (with 90 days to serve, with the balance stayed until December 1, 2009) to allow Respondent to complete the following courses: valuation of vacant land or subdivision valuation, sales comparison, highest and best use, 15 hour USPAP, and 14 hour residential report writing and case studies by said date. Respondent was disciplined in this regard in February of this year by the NC Appraisal Board, and has agreed that this Commission may impose reciprocal discipline against his Tennessee certificate. He practices in Boone, NC, and has executed an affidavit attesting to the fact that he has not appraised property in Tennessee the periods of time in which he has been suspended in NC.

**Pattie J. Tennille** (approved 04/09) – signed Consent Order agreeing to a 1 year suspension of his Tennessee certified general certificate (with 90 days to serve, with the balance stayed until December 1, 2009) to allow Respondent to complete the following courses: appraiser liability, sales comparison, business practices and ethics, 14 hour highest and best use and residential market analysis, and 15 hour USPAP by said date. Respondent was disciplined in this regard in February of this year by the NC Appraisal Board, and has agreed that this Commission may impose reciprocal discipline against her Tennessee certificate. She practices in Boone, NC, and has executed an affidavit attesting to the fact that she has not appraised property in Tennessee the periods of time in which she has been suspended in NC.

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**1. L09-APP-RBS-2009000151 Commissioner Flowers was the Reviewer**

The Complainant/mortgage lender alleged that Respondent over-valued a residential property by providing a value estimate of $213,000 with an effective date of 10/29/08, and the Complainant supported this allegation with another appraisal completed by a second appraiser which indicated a value of the subject of $177,000 on 11/5/08. Respondent responded to the Administrative Director by stating that she believed the lender had withdrawn the allegations, and that for whatever reason, she did not receive Chase's November 19, 2008 letter to her outlining Chase's concerns and which gave her 21 days to respond, until after the Christmas and New Year's holidays due to unspecified "mail problems".

Commissioner Flowers found that in the sales comparison approach, Respondent made a $20,000 positive adjustment for site size for sales 1 and 2, and that according to the Respondent's methodology, she should have made either a $16,000 or a $20,000 negative adjustment as to sale 3, no adjustment as to sale 4, and a $40,000 negative adjustment as to sale 5. Instead, Respondent made no negative adjustments for site size as to sales 3 and 5. At the top of page 2 of her URAR, Respondent claimed that there are 3 comparable sales in the neighborhood offered for sale between $175,000 and $250,000, and 10 comparable sales in the subject neighborhood that have sold in the past 12 months in that price range. This is an inaccurate statement since two of her comparable sales sold below

$175,000.

Further, Respondent provided no support for the site value; there is no quality of construction indicated and therefore there is no way to follow Marshall & Swift Residential Cost. In the sales comparison approach the Respondent indicates the subject has an actual age of 11 years, and Marshall & Swift indicate that a frame house of this quality would have a life expectancy of 55 years. This would indicate that this house would have 20% depreciation; however, in the cost approach, the Respondent only finds $8,375 in depreciation (which is a mere 5%).

Commissioner Flowers is of the opinion that the Respondent actions in this regard have violated the Competency Rule (Item 2), and SRs 1-4(a), (b)(i), (ii), and (iii), 1-6(a) and (b), SR 2, 2-1(b), and 2-2(b)(viii) of USPAP.

**Prior Complaint / Disciplinary History:** None.

**Recommendation and reasoning:** Commissioner Flowers recommends that the Respondent be offered a consent order requiring her to take and complete a Residential Report Writing course (40 or 50 hours), and that she be strongly exhorted to come in for an informal conference regarding this complaint. If Respondent does not accept the proposed consent order, a formal proceeding should be commenced.

**Vote:** Mr. Phillips made the motion to accept the recommendation and Mr. Headden seconded the motion. The motion carried unopposed.

**2. L09-APP-RBS-2009000881 There was no Reviewer**

The Respondent executed a consent order in the early part of 2008 relative to two 2007-2008 complaints, and the consent order was signed and effective on March 12, 2008. This order required that she pay a $3,000 civil penalty, complete a 30 hour Report Writing course within 90 days of the effective date of the order, and that she be placed on 6 months' probation, to commence 30 days after the effective date of the order. The probation required that Respondent have another appraiser sign all of her appraisal reports prepared during this 6 month probationary period. The probationary period commenced on April 12, 2008 and concluded on October 12, 2008. The Report Writing course was to have been completed by June 12, 2008.

On April 16, 2009, counsel for the Commission wrote Respondent requesting copies of all of Respondent's appraisal reports prepared between April 12 and October 12, 2008 (to determine whether they were signed by another licensed or certified appraiser, as required by the March 12, 2008 order), and documentary evidence setting forth that Respondent had completed the Report Writing course by June 12, 2009. Counsel gave Respondent until April 29, 2009 to deliver the requested evidence.

Respondent called Ms. Avers and requested an extension of time, and was granted until April 30 in that Respondent was already 9 months delinquent.

Respondent contacted another local appraiser between April 20 and 29, 2009, and asked this other appraiser to retroactively review and sign all of these appraisal reports (in a fraudulent fashion) she completed between April 12, 2008 and October 12, 2008. Respondent knows this other appraiser from church, and also delivered to his home mailbox a computer disk containing 84 appraisals that she completed between April 12, 2008 and October 12, 2008. The other appraiser called Ms. Avers and disclosed what had happened, that he had declined to assist Respondent, and that he did not want to get her in trouble or “let anyone down”.

Respondent, in her May 28, 2009 response to this complaint makes several excuses for not complying, and denies fraudulent intent, by contending: (i) that she misread the consent order and searched for a class to satisfy the order requirements without success last year (she still has not completed the requisite course); (ii) she could not find any other appraisers in the local area last year to sign her appraisal reports, and only called upon the other area appraiser in April of this year for “advice and comfort”, as “a friend”

The Respondent’s excuses are not believed to be credible, and had she succeeded in obtaining retroactive signatures on all of the 2008 reports referred to herein, she would have possibly perpetrated a fraud on the Commission.

**Prior Complaint / Disciplinary History:**
**200706816** (Closed – Consent Order $1,000)
**200708388** (Closed – Consent Order $3,000, + 30 hour Report Writing, + 6 month probationary period)
**200800066** (Closed – Consent Order $3,000, + 30 hour Report Writing, + 6 month probationary period)

**Recommendation and reasoning:** Counsel and the Commission’s Administrative Director recommend that the Respondent be offered a consent order of permanent voluntary surrender of her certified residential certificate with no opportunity for an informal conference. Should Respondent reject this proposal, a formal proceeding should be commenced.

**Vote:** Mr. Flowers made the motion to accept the recommendation and Mr. Woodford seconded the motion. Mr. Wade recused from vote on this matter. The motion carried unopposed.

**3. L09-APP-RBS-2009001211 No Reviewer was necessary**
The Complainant, the client/mortgage lender, alleged that the Respondent over-valued a residential property by indicating a value opinion of $422,000 in an exterior-only appraisal with an effective date of November 18, 2008. An appraisal completed by another appraiser on October 28, 2008 and which indicated a value opinion of $335,000 was included as support to the allegation (interior and exterior inspection included/URAR). The Complainant also alleged the Respondent:

1. Failed to adequately describe the neighborhood and market conditions.
2. Failed to bracket the basement amenity in the sales grid.
3. Used comparable sales that were significantly different in gross living area (GLA) than the subject property without adequate reconciliation.
4. Failed to support the age adjustment applied to the comparable sales one and lack of adjustments to comparable sales two and three.
5. Failed to support the basement adjustment applied to the comparable sales.
6. Overstated the neighborhood boundaries.
7. Failed to support the site value estimate in the appraisal report.
8. Failed to summarize the analysis of the listing history of the subject property.
9. Failed to reconcile and summarize the reasoning for the indicated value opinion in the sales comparison approach.

The Respondent stated in his response letter that the appraisal in question was an exterior only inspection appraisal completed on a property with lake frontage. He stated the value of these properties vary due to site size, location, topography and the quality of the improvements. He indicated there was a scarcity of sales on the lake in this area. He further stated that the quality of the basement is unknown to him because of the "nature of the assignment" and "because of unknown factors minimum adjustments were used". He included three land sales as support for the site value opinion in his response letter, but did not include the MLS sheets or public records for these three land sales as was requested from his workfile, in his written response to the complaint. He reported that he made two requests for the sales contract, but did not receive a copy. He stated in conclusion that any mistakes made in the appraisal report were not made to mislead the intended users or misrepresent the subject property in any way.

**Administrative Staff Observations from Complaint file (2008 USPAP used for reference):**

1. The Respondent failed to summarize the efforts undertaken by the appraiser to obtain the contract information within the appraisal report. **SR 2-2 (b) (viii)**
2. The Respondent failed to summarize an analysis of the listing history of the subject property, but instead only checked the "yes" box that it had been listed in the prior 12 months and referenced an MLS number on the report. The listing of the subject property (submitted by Respondent from workfile) revealed that the days on the market at that time was 200 days, which already exceeded the marketing time indicated by the Respondent in the appraisal report. **SR 1-5 (a), SR 2-2 (b) (viii)**
3. There is no explanation on the appraisal report why the borrower (Brantley) and the owner of public record would be the same individual on a reported purchase transaction. **SR 1-1 (b) & (c); SR 2-1 (a) & (b)**
4. The Respondent misreported the ownership information. The owner of record on the CRS card submitted by the Respondent dated 11/18/2008 reported a C. Wilson as the owner at that time. A search by staff revealed that the owner is still C. Wilson as of the date of the review of this complaint. **SR 1-1 (b) & (c); SR 2-1 (a) & (b)**
5. The neighborhood boundaries are incorrect. The city of Harriman is physically to the north of the subject, not the east. No eastern border was provided in the appraisal report. **SR 1-1 (b) & (c); SR 2-1 (a) & (b)**
6. The neighborhood description is extremely limited and may not meet the requirements of a summary appraisal report. The market conditions section of the appraisal report does not appear specific to the subject market area. This appears to be "cloned" or copied information from another report. The subject is reported to be an older than average dwelling in the market with no significant updates or improvements noted in the appraisal report. Predominant price indicated by the Respondent in the neighborhood section of the report was $380,000. No summary of why the subject was valued above predominant price was included in the appraisal. **SR 2-1 (a) (b)**
7. There is no indication from where the site size reported in the appraisal report (1.23 acres) was sourced. The CRS card submitted by the Respondent doesn't report the site size other than "Acreage 0". The Respondent hand wrote in 1.23 acres on the card. Staff can find no record that includes this size for the subject property from any public record data that indicates greater than one acre. Staff called the Assessor's office for Roane County, which could not report an acreage total, but only had the information "254.2' x 211.5 irregular". The Roane Country Register of Deeds' Office was called. They mailed in a copy of the deed. Deed received 4/7/09; it does not report a lot size of 1.23 acres. The Respondent misreported the acreage. The shared lot is unclear in ownership from the deed received from the Roane Country Register of Deeds. **SR 1-1 (b) (c); SR 1-2 (e); SR 2-1 (a) (b)**

8. The zoning is not described further than “residential” in the appraisal report. There is no data in the workfile of the appraiser on zoning information. Zoning was verified with the Roane County Zoning office, to actually be “R-1 Low Density Residential”. **SR 1-2 (e); SR 1-3 (b); SR 2-1 (a) (b)**
9. No updates were reported for the subject property that would support the effective age opinion rendered of 20 years. The Respondent reported the condition as “average” in the appraisal report, but his only source of data recorded in the report, CRS, reported the condition as “Needs Minor Repairs”. No source was given for the Respondent’s effective age opinion of 20 years, when the cited source (CRS) reports the effective age to be 30 years and “Needs Minor Repairs”. His response letter is also indicative that the Respondent did not have adequate information on the interior condition of the subject property. **Scope of Work Rule; SR 1-1 (c); SR 1-3 (a); SR 1-2 (h); SR 2-1 (a); SR 2-2 (b) (vii)**
10. All the comparable sales used are newer properties (17, 25, 22 years) than the subject property (40 years). A minimal adjustment of $5,000 was applied to comparable sale one without a summary of how the effective age opinion of 15 was supported by the appraiser. No age adjustments were applied to comparable sales two or three. No summary of why no adjustment was needed was included in the appraisal report; nor how the effective age opinions of these two properties were developed (20 years) which is the same opinion given for the subject property for a dwelling almost twice as old as these properties. **SR 1-4 (a); SR 2-1 (a) (b) (c); SR 2-2 (b) (viii)**
11. The three comparable sales were reported to be lake front properties similar to the subject property. No adjustments were applied for site size, location or topography. No summary of this information was included in the appraisal report reconciliation, though in the response letter to the complaint the Respondent indicated that the values of this properties “vary due to site size, location, and topographical lay of the land and quality of the improvements” and, “to narrow that range the quality of the improvements and the site location, as to its place on the lake itself not proximity to any particular town, has to be known.” There is no indication in the appraisal that any analysis of this kind was developed. In contrary evidence, there is no discussion of lake frontage at all in the appraisal report. Lake frontage is a primary value influence in properties of this type. Also, there is no indication that location on the lake has been analyzed. The comparable sales indicate an extremely wide range of sale prices; $319,500; $514,785; and $363,000 respectively. Gross adjustments applied to these comparable sales were 8% or less, and comparables two and three were adjusted positively from their sale prices which widened the adjusted sale prices of these sales to: $310,960; $533,065; and $388,000 respectively. The reconciliation does not explain this range. Staff review of the MLS sheets of comparable sales one and two indicate the Respondent failed to analyze relevant data. Comparable two has 700 feet of lake frontage and is on the main body of the lake/river (per MLS sheet). The subject has 210 feet of lake frontage (per MLS sheet) and is not located on the main body of the lake, but rather up a tributary of the river/lake. This is a significant omission of relevant data and failure to analyze comparable sale data. This significantly affected the value opinion indicated as the Respondent valued the property at $422,000, when the adjusted sales prices of comparables one and three indicated a much lower value. This MLS information was submitted by the Respondent in response to the complaint, which indicates either intentional fraud or significant incompetence in appraising this type of property. Given that the Respondent acknowledged in his response to the complaint the value of location on the lake/river for this property type, this seems to be strong evidence of favoring the cause of the client, reporting of a predetermined result or a direction in value. **ETHICS RULE – Management Section, SR 1-1 (a), (b) and (c), SR 1-4 (a), 1-6 (a), 2-1 (a) and (b), 2-2 (b) (viii)**

12. Comparable two also was the oldest sale used, exactly one year prior to the effective date of the report. No time of sale adjustment was applied or reconciled why an adjustment was unnecessary. It has also become evident from another appraisal and the Respondent's own workfile information that additional, more recent sales were available that are more in line with the sale prices of the other to comparable sales used. **SR 1-4 (a); SR 2-2 (b) (viii)**
13. The Respondent failed to submit any public record data or MLS data for comparable sale three. Staff obtained this information from a third party. **Ethics Rule – Record keeping Section**
14. No analysis of seller concessions of the comparable sales was included in the appraisal report**.** **SR 1-1 (a); SR 1-4 (a)**
15. No analysis of the larger site sizes of comparables one and two was included in the appraisal report. **SR 1-1 (a); SR 1-4 (a)**
16. The gross living area of the subject and the basement finish of the subject property appear to have been overstated. The Respondent's appraisal matches public record data, but this information should have been verified with another reliable source. This over-stating of the size also minimally increased the value opinion of the subject property. **Scope of Work Rule; SR 1-1 (b) (c); SR 1-2 (e); SR 2-1 (a) (b) (c)**
17. No support was included in the appraisal report or workfile for the adjustments for vinyl siding ($1,000), GLA ($20 per sq ft), basement ($3000 for basement, $3000 additional for basement finish), or garage ($3,000/$2,000). **SR 1-4 (a); SR 1-6 (a); SR 2-2 (b) (viii)**
18. The garage adjustment appears inconsistently applied and doesn't seem to reconcile information for the MLS on comparable one. Comparable one is stated to have a large garage with an area above that can be finished for a bonus room or apartment. This seems like a significant feature to reconcile given the subject has no garage. **SR 1-4 (a); SR 1-6 (a); SR 2-2 (b) (viii)**
19. The gross living areas of the comparable sales (2972, 1680, and 1395 respectively) are very different than the subject property (2495 sq ft reported). The adjustments applied do not appear to have reconciled this difference. **SR 1-4 (a); SR 1-6 (a); SR 2-2 (b) (viii)**
20. The reconciliation of the sales comparison approach indicates a final value opinion of $450,000, which is contrary to the final value opinion for the sales comparison approach given in the blanks for sales comparison and final value. **SR 1-6 (b); SR 2-1 (a) (b)**
21. No reconciliation was included for the cost approach, which indicated a value opinion of $407,072. No statement was included as to why this would be less than the sales comparison approach. **SR 1-6 (b); SR 2-2 (b) (viii)**
22. No statement was included in the appraisal report as to why the income approach was omitted. **SR 2-2 (b) (viii)**

The subject property is reported to be vacant in the appraisal report. The CRS data also report this to be a vacant property as did MLS information. This seems unusual and brings to question if this is a rental property or vacation home, which would be significant information to the client/intended user. The Complainant, a mortgage lender, alleged that Respondent was contracted to complete an appraisal assignment on April 4, 2009. The subject property was inspected on April 14, 2009 by the Respondent and the Complainant alleged that a three business day turn around time was promised. The Complainant further alleged that numerous calls were made to the Respondent, but no appraisal was delivered. The Complainant submitted a complaint to TREAC April 29, 2009 stating as of that date the appraisal was not delivered and the appraisal fee had not been returned. The lender alleged this caused his customers to lose a financing rate.

The Respondent replied to the complaint the same date it was e-mail to him, April 29, 2009. He stated the borrower rescheduled twice for the property inspection after the order was place. He stated that on

April 22, the Complainant had indicated that the borrowers were “wishy washy” and he was not sure if they were even going to commit to the refinance. He stated he did tell the Complainant that he would make every effort to have the appraisal completed by April 27th, but he was not aware of any time sensitive circumstances. He stated the subject property is located in a rural area and limited data available in that County made completing the appraisal difficult. He stated he didn’t even know the Complainant was grieved in the matter until he received the complaint. He spoke to the Complainant after the complaint was received and agreed to refund the money for the appraisal.

The Complainant confirmed on April 30, 2009 that such an agreement had been made and on the same date a copy of the refund check, made out to the borrower and signed as received by the borrower was received by the TREAC administrative office.

**Prior Complaint / Disciplinary History:** None

**Recommendation and reasoning:** Counsel for the Commission and the Administrative Director **r**ecommend issuance of a proposed Consent Order which should include a civil penalty of $5,000 and required courses of 15 hour USPAP course, with successful completion of the examination; 30 hour Basic Appraisal Procedures, with successful completion of the examination; 15 hour Residential Report Writing and Case Studies course, with successful completion of the examination, to be delivered to the Administrative Director, all within 150 days after the effective date of the order, with the opportunity for Respondent to have an informal conference, if he desires such. If this offer to settle is rejected, a formal proceeding should be commenced.

**Vote:** Mr. Phillips made the motion to accept the recommendation and Mr. Carter seconded the motion. The motion carried unopposed.

**4. L09-APP-RBS-20090026691 Commissioner Phillips was the Reviewer**

The Complainant, a consumer, alleged that the Respondent over-valued a residential property by indicating a value conclusion of $252,000 on the effective date of November 18, 2006. The Complainant submitted a subsequent appraisal completed by another appraiser that indicated a value opinion of $230,000 on November 13, 2008.

The Respondent may have also disclosed assignment results to a party that is not the client without authorization from the client as it appears the appraisal was e-mail directly to the homeowner.

The Respondent stated in his response letter that the Complainant, "states that he and I discussed the appraised value of his home per my appraisal report dated 11/18/06. I did not discuss the appraised value nor did I correct him when he stated that the appraised value was $252,000 instead of $250,000. At the time we spoke on the phone, I had not viewed the appraisal in question for approximately two years and certainly did not remember the appraised value. I did remember the home, its location and the issues faced when valuing the property. The subject is quite large for its small development and has a larger site size than most other homes in the development. The location of the subject and the subject's GLA dictated that the market area be expanded to include properties south of the subject. Comparable sales were chosen for their proximity to the subject, size and amenities offered as well as their location in reference to the Central Business District." The Respondent indicated he was familiar with this market area for nearly thirty years for both work and personal reasons. Commute times for the subject market area to the downtown area is fifteen minutes or less. Many of the newer developments in other areas can expect much longer travel times due to traffic. Having spoken with area Realtors, development in the market area is hampered by its' being outside the city limits, limiting utilities. He further stated that the

Complainant's wife was home at the time of inspection and walked the interior with him, pointing out recent improvements that had been done, including renovation of the kitchen. Prior to the Complainant purchasing the property, an attached garage had been finished into a den, bedroom and full bath. After the inspection, he stated he met the Complainant at his place of business nearby and talked about the house and how much they had spent on improvements and what they would like to do in the future. A search was made for comparable sales and he stated he chose the most relevant comparable properties to value the subject. The Respondent stated at the time of inspection there were no available sales that were similar to the subject in closer proximity than those utilized.

The Respondent stated that the Complainant called him at the end of November, 2008 and stated that he was having another appraisal done for refinance purposes. He indicated that the current appraiser had come up with a much smaller square footage than what the Respondent and prior appraisers had measured. He also said that there had been a grease fire at his home that had destroyed a number of documents, including the Respondents appraisal. He wanted to know if the Respondent could send him a copy of the appraisal since he no longer had his copy. The Respondent indicated that he told the Complainant he couldn't do that, but that he would try to find out if it was possible. The Complainant seemed desperate to prove that his home was larger than the current appraiser stated, according to the Respondent, so Respondent e-mailed to Complainant the sketch page from the report. He stated he did not review the report with the Complainant or discuss the findings of the report, other than sending him the sketch.

**Prior Complaint/Disciplinary History:** None.

**Recommendation and reasoning:** Commissioner Phillips finds that the issue related to overvaluing the subject property is unfounded. The time spread from the Respondent's appraisal with a value date of November 18, 2006 to the appraisal date of the other appraisal dated November 13, 2008 is approximately two years. The $250,000 value reported by the Respondent and the $230,000 reported by the other appraiser are in different time frames; they are looking at different markets. With the downturn in the real estate markets over the last few years, the value of the subject could possibly be lesser after this two-year timeframe. Relative to the possible confidentiality violation, it appears that the Respondent only supplied the homeowner with a sketch of the property. The owner mentioned that he misplaced his copy of the appraisal which in all probability he received from the lender. It is Commissioner Phillips' finding that this is a minor infraction, and Commissioner Phillips' recommendation is that the file be closed by issuing to the Respondent a letter of warning outlining the confidentiality ethics rule cited in line 265-270.

**Vote:** Mr. Flowers made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

**5. L09-APP-RBS-2009025171 Commissioner Phillips was the Reviewer**

The Complainant, a lender, alleged that the Respondent over-valued a residential property at $106,000 and that a field review conducted on the property returned a value opinion of $94,000. They also alleged the Respondent misreported neighborhood boundaries, failed to report foreclosure activity in the neighborhood, omitted that the subject backs to a commercial property on the TN/MS State line, and used four of six comparables from outside of the subject neighborhood.

The Respondent stated in his response letter that he submitted 3 versions of the appraisal report to his client dated January 21, February 22, and February 23. He stated the first version of the appraisal was the one that the Complainant submitted with the complaint. He stated the Complainant was not his client and that a named mortgage company was his client and they had received the 3 versions of the appraisal report which included corrections made and additional comparable sales. The first and second appraisals included a value opinion of $106,000 and the third report had a value opinion of $97,000. He admitted that he misreported the neighborhood description due to a failure on his part to review the appraisal before sending the complaint to his client. He stated this was due to cloning a different appraisal report, but that he was knowledgeable of the subject market and believes the comparables used represented the subject property's market value. He stated the comparable sales used were in the subject's market area/neighborhood. The Respondent submitted market data for the subject area and for the adjoining MLS map area. The Respondent disagreed with the market value indicated by the field reviewer of $94,000 because he felt the reviewer did not use the best comparables available. The Respondent did not comment on the indicated value he submitted on the third report for $97,000 which seemed fairly consistent with the field review indication, as opposed to the indicated value of $106,000 in the first two reports completed by the Respondent. He did stated that the reviewer used a comparable sale with a construction business located directly behind it stating it had "excessive amount of external obsolescence", but then when commenting on the subject proximity to commercial property, he stated he felt it did not negatively influence the value and did not summarize the information in any of his appraisal reports. He stated he felt the review appraiser's allegation that his adjustment for parking was not sufficient was not valid. The Respondent submitted two additional comparables as support for his value opinion, that were older sales of larger gross living area. Pertaining to the allegation that he did not discuss foreclosure activity in the neighborhood, he stated he considered foreclosure activity and its influence on value. Finally, pertaining to the allegation that he failed to summarize in the report that the subject backs to commercial and/or light industrial property and did not disclose, discuss or reconcile this influence in the report, he stated that there is a concrete parking lot, a large vacant area, a church, and a kitchen design services company behind the subject and "probably has very little influence at all on the subject's marketability." Photos were included as support. He explained the revisions of the report were because in the first (dated 1/19) that he had omitted the summary of the sales comparison approach comments and the condition of the improvements section has incorrect information that was cloned from a prior appraisal report. He also added a comparable sale to that second report (dated 2/22). He stated the third report (dated 2/23) was created because the underwriter had requested three additional comparable sales within a mile of the subject and sold within 90 days and not a result of a previous foreclosure. He stated that in light of the additional comparables used he reconsidered his value opinion and appraised the property then for $97,000. He admitted errors on the third report including omitting and inconsistent adjustments. He also stated that, "in the original report, I only included sales within 10% size of the subject and relatively close to the estimated value of the subject. When adding the additional sales in the report signed 2/23/08, I included sales that varied from the subject by more than 10% size and were not as close to the subject's estimated value." He also stated it was then that he noticed the neighborhood boundaries were incorrect.

Commissioner Phillips' findings and Administrative Staff's observations are as follows:

1. All three reports have an effective date of January 19, 2008 and were reported to be for a refinance transaction. The report with a date signed of January 21 indicates a final value opinion of $106,000. The report with a date signed of February 22 indicates a value opinion of $106,000. The report with a date signed of February 23 indicates a value opinion of $97,000.

2. The effective age of the improvements is 13 years for the first two reports, but was changed for the report dated February 23 to 18 years' effective age. No reason was given in the report for the change in effective age. The description of the condition of the improvements did not change in the three reports.

3. The neighborhood description is not representative of the subject area in all three reports.

4. The market conditions section (in all three reports) appears to be a generic statement not applicable to the subject market and discloses no information on the foreclosure trends in the subject neighborhood as alleged by the Complainant.

5. The two highest sales in the report dated signed of January 21 were approximately a mile away from the subject property. No reason was given in the appraisal report for the need to use comparables at this distance in a metropolitan area. In the report signed February 22 a fourth comparable was added that is also a mile from the subject property; no reason for this distance was given in the appraisal report.

6. In the report with a date signed of February 23, fifth and sixth comparable sales were added. Comparable five was 0.21 miles from the subject and indicated an adjusted value, per report, of $88,500. Comparable six was 0.92 miles from the subject property, and indicated an adjusted value, per report, of $81,900. These lower sales were not reconciled within the appraisal report as to why these would have such a significantly lower value indication.

7. In the cost approach for the reports with a date signed of January 21 and February 22 the indicated value by the cost approach was $106,888. In the report with a date signed of February 23 the indicated value by the cost approach was $97,648. The third report received an additional depreciation deduction for physical depreciation of $9,240 more than the previous two reports, which appears to have been to bring the value indication down to that indicated in the sales comparison approach of $97,000. There was no explanation for this additional depreciation deduction in the report which was applied only one day after the previous report and with the same effective date in all three appraisal reports.

8. No support was given for the site value opinion in the appraisal report and no data was submitted from the work file to support that value indication.

9. The gross living area adjustments appear to have been omitted from comparables five and six.

10. In the report with a date signed January 21, the condition of the improvements section indicates that the subject had fair condition carpet and had a cost to cure of $3,000 reported. This comment was deleted from the two subsequent appraisal reports.

11. In the report with a date signed January 21, there was no summary of the sales comparison approach reconciliation included. The comments were added in the two subsequent reports.

12. In the reports dated February 22 and 23, the sales comparison comments state that the subject was valued near the upper end of the indicated value range due to it having good curb appeal and being well maintained, though in the report dated February 23 the value opinion was towards the lower to middle range of the adjusted comparable sales.

13. There are comments in the sales comparison reconciliation in the reports dated February 22 and 23 regarding foreclosure properties in the neighborhood being purchased, remodeled and resold in the $124,000 sale price range. This seems inconsistent with the previous indication that the subject was at the higher end of the value range due to maintenance and curb appeal. There is no indication from included photos of the subject and six comparable sales that the subject has superior curb appeal.

14. Comparable sales one, five and six had sale prices of $96,000, $86,000 and $79,900 respectively and were on the same side of a major interstate as the subject property. Sales two, three and four had sale prices of $106,500, $115,000 and $109,900 respectively and were on the opposite side of the highway as the subject property. The interstate appears to be a significant market transition given the sales included in the Respondent's appraisal reports; however, no adjustments were made for location to any of these comparable sales nor were their location differences described in the report except as identified on the location map.

15. The photo included of comparable two appears to indicate superior quality; no adjustment or reconciliation was included in the report for this difference.

16. Comments made in the response to the complaint by the Respondent indicate favoring a pre-determined value opinion, probably supplied by the client, such as "in the original report, I only included sales within 10% size of the subject and relatively close to the estimated value of the subject. When adding the additional sales in the report signed 2/23/08, I included sales that varied from the subject by more than 10% size and were not as close to the subject's estimated value." Comparable sales should not be selected based on the "estimated value" of the subject provided by any client, but rather sales of similar properties are used to develop the opinion of value.

**Prior Discipline/Complaint History:** None.

**Recommendation and reasoning:** The Respondent has violated numerous Standards according to Commissioner Phillips, which are Standard Rules 1-1(a), (b), & (c), 1-4(a) & (b). In addition, there are ethical violations of conduct. It appears the respondent is trying to reach a predetermined value. Ethics Rule, Conduct Section (Lines 243-247) states, “It is unethical for an appraiser to accept an assignment, or to have a compensation arrangement for an assignment, that is contingent on any of the following: 1.The reporting of a predetermined result (e.g., opinion of value); 2. A direction in assignment results that favors the cause of the client; 3.The amount of a value opinion.” Further, the appraiser has violated the Ethics Rule, Conduct Section (Lines 217 and 224-226) which states, “An appraiser must perform assignments ethically and competently, in accordance with USPAP. An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraisers must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report.”

Due to the respondent having competency and ethical conduct issues, it is recommended that the Respondent be offered a consent order suspending his certificate for two months, with the opportunity for an informal conference. The respondent should be required within said order to attend and complete a 15-hour National USPAP Course and a 30-hour Sales Comparison and Cost Approach Course. These courses should not be credited for CE requirements. In addition, the respondent should be required to keep a log for 30 days after his suspension to be submitted to TREAC from which 3 reports will be reviewed for their compliance with USPAP.

If Respondent does not accept this proposal, a formal proceeding should be commenced.

**Vote:** Mr. Headden made the motion to accept the recommendation and Mr. Flowers seconded the motion. The motion carried unopposed.

**6. L09-APP-RBS-2009026711 Commissioner Flowers was the Reviewer**

The Complainant, a lender, alleged that the Respondent over-valued a residential property (constructed in 2007) on two separate occasions, misreported or omitted neighborhood information, used superior quality properties as comparables, and failed to support adjustments made in the sales comparison approach. The Respondent was also asked to describe in detail the quality adjustment made to comparable sales and the method he used and support for that adjustment by administrative staff of TREAC in the complaint letter sent to him. Further, Respondent was asked to describe in detail why two appraisals reports were submitted to the client for this assignment and why there are two different value opinions on these reports and two different site value opinions, and finally, to describe in detail why different adjustments were applied in these two appraisal reports for quality and condition to comparable properties of the same address.

The Respondent stated in his response letter that the subject is a modular built house, not mobile or manufactured. He stated that his research (for comparable sales) did not produce any modular home sales in (County) in the past 2 years. He further stated he contacted a real estate agent and asked if she knew of any modular home sales in the area, but there were no sales of this type in this area, except those that a builder was putting on bluff lots and selling them for $600,000 plus, and he could not use those as comparable sales. He asserted that he went to the Marshall & Swift manual for guidance. It said that modular homes should be **priced** from the site built housing cost guide. He researched (site built) comparable sales with similar square footage and age. He stated that he learned from inspection underneath (the subject) that it has 2 X 12 floor joist on 16 inch centers and concrete block piers in concrete similar to a stick built house. He stated that he selected the comparable sales and he knew they were superior to the subject property which was the reason for the average- for the subject property and the reason a negative adjustment was made in the original report and that he tried to use a negative adjustment that would be fair and reasonable.

According to his response letter, on or around 10/2/2008 the Respondent received mail from the Lender/Client indicating that they did not agree with his opinion of value and they put him on their ineligible list. On or about 11/22/2008 the Respondent received a call from the Lender/Client requesting him look over the report again because they wanted to complete this loan. He stated he knew from the previous letter from the Lender/Client that they did not agree with his opinion of value because they said the curb appeal of his comparable sales was superior to the subject property and that he had not completed the cost approach on a one year old house (2007). He reviewed the appraisal and decided he may not have made a large enough negative adjustment to the comparable sales, so he made a $25,000 negative adjustment to the comparable sales (instead of the $5,000 previously applied), thereby reducing his opinion of value. He stated he also looked at the land value and did more research and decided that he had also undervalued the land. On 11/24/2008 he resent the revised report to the Lender/Client. He stated he included the cost approach in this second report even though he did not feel that the cost approach was necessary to produce a credible report and that the house was more than a year old (built in 2007), so the accuracy of the cost approach would be off somewhat. In doing the cost approach he stated he used the Marshall & Swift average quality one story residence stud framed with vinyl siding,

$71.31 as base, $2.93 for the carpet, $4.13 for the vinyl flooring, $175.00 for the 5 foot dormers (2 each), $2,295 for the fireplace, $.92 for the floor insulation, garage $15 per SF, and the site improvements at $12,000. He alleged that all this information was obtained from the Marshall & Swift Residential Handbook.

He included information on how he obtained the original site value opinion, but staff could not discern methodology used from the description included in the response letter.

He stated further that after he received the letter from the Lender/Client criticizing his opinion of value, he decided that he should relook at the land value as well. He felt that he had undervalued the land in the first report. In the second report he stated he used a value that is certainly not inflated or exacerbated and is well supported in the land sales he found.

He stated he did not omit any neighborhood information and did not misreport any neighborhood information. He stated he did use superior comparable sales, and explained why it was necessary in the report. He also stated that all of the adjustments that were used in this report fall well within the range described in Marshall & Swift. These adjustments also fall well within the range of adjustments that I have used in many reports that have been reviewed by many others in the process of loans. He concluded that he changed his opinion of value because he thought that he may not have taken enough away for curb appeal and had not valued the land correctly. He stated this is the first modular home he had ever encountered, but he did his research on modular homes before he accepted the assignment and proceeded with the assignment according to the data available.

Commissioner Flowers' findings are as follows:

As to the first appraisal with an effective date of 9/27/08, the Respondent did not properly employ the sales comparison approach, since he made a $5,000 negative adjustment for quality and a $20 per sq. ft. adjustment for difference in size for both sales 1 and 2, without any support. Respondent also made a $5,000 negative adjustment for quality of sale 3 with no support. Respondent also failed to develop a cost approach in this first appraisal, and his $10,000 site value conclusion was without any supporting documentation. The Respondent's peers would have developed the cost approach in an appraisal with subject improvements only 1 year old. Respondent also failed to develop an adequate reconciliation, since he acknowledged the cost approach was applicable but nonetheless failed to develop it.

As to the second appraisal of the subject signed on 11/17/08, the Respondent did not properly employ the sales comparison approach again, since he made a $25,000 negative adjustment for quality and a $20 per sq. ft. adjustment for difference in size for both sales 1 and 2, without any support. Respondent also made a $25,000 negative adjustment for quality of sale 3 with no support.

In both reports, Respondent inconsistently stated in the Neighborhood Characteristics section of this URAR that the neighborhood was 25% to 75% built up, but that the present land use was 98% one unit, and 2% other. On page 7 of this URAR, Respondent stated there were no comparable sales within the subject neighborhood within the past 12 months ranging in sales price from $0 to $0 – which is illogical. In the age section of his grid, Respondent stated that the sales were 5 to 8 years old, but he made no adjustments for the difference in ages.

Respondent also failed to adequately describe the site, in that he did not discuss whether or not gas was available.

As to the cost approach, Respondent did develop this approach in this second report of the subject (both with 9/27/08 effective dates), and he inconsistently concluded the land value was $21,400 (as opposed to $10,000 in the first report) with no supporting documentation. Respondent referred to Marshall & Swift Residential Cost Handbook (2008 ed.), but provided no references to page numbers or cost and local multipliers. For instance, cost and local multipliers from pages F1 (being 1.00) and F8 (being .93) were not deducted. Therefore, the $78.04 per dwelling sq. ft. cost should have been multiplied x 1.00 x .93, to arrive at an accurate cost of $72.58 per sq. ft. in the cost approach, which Respondent did not do. This failure to use cost and local multipliers resulted in a $10,000 inflated value in the cost approach.

Commissioner Flowers is of the opinion that the Respondent has violated the Ethics Rule, Conduct Section, the Competency Rule, and SRs 1-4(a), (b)(i), (ii), & (iii), 1-6(a) & (b), 2-1(b), and 2-2(b)(viii), by his actions in these two appraisals.

**Prior Complaint/Disciplinary History:** None.

**Recommendation and reasoning:** Commissioner Flowers recommends that the Respondent be offered as to both complaints running concurrently, a consent order imposing a 3 month suspension, a $5,500 civil penalty, and that the following courses be completed before the end of the suspension period: 15 hour USPAP, Basic Appraisal Procedures, Residential Report Writing, and Residential Site Valuation Cost Appraisal, with no continuing education available. Respondent should be strongly exhorted to come in for an informal conference regarding these complaints. If Respondent does not accept the proposed consent order, a formal proceeding should be commenced.

**Vote:** Mr. Headden made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

## Applicant Conferences

- Trainee applicant **Odus Washington Smith, III** admitted on his application a conviction for Petit Larceny (a misdemeanor) in Shelby County in 1976. This applicant has had no other criminal convictions and has had licenses with the Tennessee Real Estate Commission and the Contractor's Board since the mid-80s, without having received any discipline as to those licenses. Commission Woodford made motion to approve the application. Mr. Flowers seconded that motion. The Commission voted unanimously to approve this applicant's request for a real estate trainee certificate of registration.

- Trainee applicant **Frank J. Brownell, IV** admitted on his application being convicted of 4 counts of uttering a forged instrument (felonies) in Duval County, FL in 2008. The Commission voted unanimously to deny this applicant's request for a certificate of registration as a real estate appraiser trainee with no time period stated before the Commission will consider a new application from this candidate. This applicant is allowed to submit to the Commission's administrative office in the future, any written statement, affidavit, or transcript of testimony of the individual applicant alleges was the mastermind of the criminal enterprise, if he can obtain such evidence. Commissioner Headden made a motion to deny the application. Mr. Flowers seconded that motion. Carter voted yes. All others voted to deny. Motion carried to deny.

- Trainee applicant **Derrick Smith** admitted on his application being convicted of DUI Manslaughter, and DUI with serious bodily injury (felonies) in Panama City, FL in 2001. Applicant served almost 7 years of a 10 year sentence in prison, and in late 2008, was released on probation until 2015. Applicant, pursuant to an interstate agreement, is being supervised on probation by the Tennessee Board of Probation and Paroles. Woodford made motion to table until next meeting. That motion was seconded by Mr. Headden. The Commission unanimously voted to defer a decision on this matter until its July 13, 2009 meeting.

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Being no further business, the meeting was adjourned at 10:55 a.m.

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Chairman, James E. Wade, Jr.

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Nikole Avers, Administrative Director